

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 469 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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G S R T C

Versus

JAMALSINH F BARAIYA

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Appearance:

MR HARDIK C RAWAL for Petitioner  
NOTICE SERVED for Respondent No. 1

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/10/1999

ORAL JUDGEMENT

Heard Mr.Raval appearing for the petitioner  
Corporation. Though served, nobody has appeared for the  
respondent workman.

The facts of the present case in short that the  
respondent was working with the petitioner Corporation as

a driver. On 21.5.81, the respondent was on duty in a route between Ubhram to Sevaliya. The respondent had driven the bus and brought it to Sevaliya at about 12:30 in the afternoon. The Traffic Controller had directed the respondent to ply the bus between Balasinhore - Thesia route to which the respondent refused. Thereupon, the respondent was served with chargesheet and after initiating the departmental inquiry he was dismissed from service by order dated 29.12.81, which action of the Corporation was challenged by the respondent workman by filing reference no.455/83 before the Labour Court, Nadiad. The Labour Court under its order award dated 18.4.87 set aside the order of dismissal and directed the petitioner Corporation to reinstate the workman with full back wages. Said award of the Labour Court has been challenged by the petitioner Corporation before this Court by filing this petition.

I have perused the impugned award passed by the Labour Court. Before the Labour Court initially the workman has filed pursis Exh.12 and has admitted the legality and validity of the departmental inquiry and has also foregone the claim of backwages and prayed before the Labour Court to reconsider his case for reinstatement with some appropriate punishment. Subsequently, said pursis was withdrawn by the respondent workman and the workman insisted before the Labour Court to grant back wages. The Labour Court after perusing the papers brought before it came to the conclusion that respondent was right in refusing to the Traffic Controller to carry out his direction for going to duty in bus between Balasinhore - Thesia. Said conclusion of the Labour Court is not correct because this is overtime work which is required to be undertaken by the workman. The petitioner is a Public Corporation and refusal from driver to carry out the direction would naturally affect the administration of the Corporation and may result into hardship to the Public at large and therefore such refusal on the part of the workman should be considered to be misconduct but it cannot be considered to be a grave misconduct and therefore the Labour Court has come to the conclusion that the order of dismissal passed by the Corporation is required to be quashed and set aside and the workman is entitled to resintatement with continuity of service with full back wages.

I have considered the papers on record and submissions made by Mr.Raval. On 23.1.1991, while admitting this petition, this Court passed the following order:-

"Rule.

Heard the learned advocates appearing for the parties as regards interim relief.

In the facts of the case, it is directed that there shall be no interim relief against the order of reinstatement. As far as the payment of amount of back wages is concerned, till the final hearing and disposal of the petition, the petitioner-Corporation will be at liberty to withhold 50% of the amount of backwages on the condition that in case the petitioner - Corporation fails in the petition, the amount withheld by it shall be paid to the respondent-workman with 15% interest. The balance of the 50% of the amount of back wages shall be paid to the workman on or before March 31, 1991. In case the entire amount of back wages is already paid to the respondent-workman, the aforesaid order permitting the petitioner-Corporation to withhold 50% of the amount of back wages will stand cancelled."

Thus, at the time of admitting this petition, this Court has granted liberty to the petitioner Corporation to withhold 50% of the amount of back wages on a condition that in case the petitioner Corporation fails in the petition, the amount which has been allowed to be withheld shall be paid to the respondent workman with 15% interest and remaining amount was directed to be paid to the workman on or before March 31, 1991. Therefore, looking to the misconduct of refusal to carry out the direction of the Superior Officer, I am of the opinion that some punishment is required to be imposed upon the workman while confirming his reinstatement with continuity of service. The workman must have been paid 50% of the back wages in terms of the interim order passed by this Court. Remaining 50% has been withheld by the petitioner Corporation as per the interim order dated 23.1.91. I am of the opinion that it would be just and proper if the award of the Labour Court is modified qua back wages and the petitioner Corporation is directed to reinstate the respondent workman with 50% of back wages instead of full back wages. Therefore, the impugned award of the Labour Court is required to be modified to that extent. Accordingly, the following order is passed:-

The petition is partly allowed. The impugned award of the Labour Court is modified in so far as it relates to payment of back wages. The petitioner Corporation shall pay only 50% of back wages instead of

full back wages. Rest of the award passed by the Labour Court is confirmed. If the amount of 50% of back wages has not been paid by the petitioner Corporation as directed by this Court on 23.1.91, same shall be paid to the respondent workman within three months from the date of receipt of certified copy of this order. Rule is made absolute accordingly. No order as to costs. It is further clarified that in case the entire amounts of full back wages were paid to the respondent workmen, then same shall not be recovered from him on the basis of said final order passed in the present petition.

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